IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1847 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1

JJJJ

for Petitioner No. 1-4FOR NANAVATI & NANAVATI for Petitioner No. 1-4FOR NANAVA I & NANAVATI for Petitioner No. 1-4FOR NANAVATI & NANAVATI for Petitioner No. -4FOR NANAVATI & NANAVATI for Petitioner No. 1-4FOR NANAVATI & NANAVATI for Pe itioner No. 1-4FOR NANAVATI & NANAVATI for Petitioner No. 1-4FOR NANAVATI

NOTICE SERVED for Respondent No. 1

MR PR ABICHANDANI, APP for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 26/02/2003

ORAL JUDGEMENT

Present petitioners-original accused against whom process was issued by the learned Metropolitan Magistrate, Court No.2, Ahmedabad, for the offences punishable under Secs.420 and 114 of IPC pursuant to a complaint filed by the respondent No.1 registered as Criminal Case No.149 of 1997, has preferred the present petition under Sec.482 of the Code of Criminal Procedure for quashing.

2. Though rule was duly served upon the respondent No.1-complainant, he has chosen not to appear either personally or through advocate.

3. Heard learned counsel for the petitioners, Mr.Devang Nanavati for M/s Nanavati & Nanavati and learned APP, Mr.P.R.Abichandani, for the respondent No.2.

4. Mr.Devang Nanavati has mainly argued that the offence in question is purely of civil nature. According to him, since there existed a long business relation between the complainant and the petitioner No.1-company, the complainant approached the petitioner No.1-company at New Delhi and gave quotation to supply raw materials i.e. Aluminium Alloys pursuant to which, an annual order was placed by the petitioner No.1-company with the complainant to buy 130 tones of Aluminium Alloy on 11-4-1994 on certain terms and conditions. One of the terms and conditions agreed upon by the parties was that there would be no revision in price or other terms during the period of contract. It was also agreed vide Sr.No.7 of the terms and conditions of purchase order that only Civil Courts at Delhi shall have the jurisdiction to try any dispute concerning the purchase orders. According to learned counsel for the petitioners, since the complainant demanded enhancement in price soon after accepting the purchase orders on 11-4-1994, correspondence took place between the parties. He has

taken me through those correspondence including Annexure-B (page 18), additional terms and conditions of purchase order (page 19) more particularly term Nos.1 and 7 and also annexure-C (page 20) more particularly para 2 of said letter. He has also taken me through the complaint in question more particularly towards paras 3 and 4. Drawing my attention towards various other correspondence annexed with the affidavit sworn by the respondent No.3 viz., Annexure-III (page 32), Annexure-IV (page 33) and Annexure VI (pages 36, 37 and 38) which are the letters written by the complainant to the accused, it has been contended by the learned counsel for the petitioners that nothing has been mentioned in the column of invoice due for payment and hence, no amount was required to be paid by the petitioners for the year 1995.

4.1 Relying upon 1993(2) G.L.H.(U.J.) 28 in the case of Ramanlal Parsottam Choksi and Others Vs. State of Gujarat and Another, 1996(2) G.L.H. (UJ) 33 in the case of Kaunteye Gaurangbhai Nimaksari and Anr. Vs.State of Gujarat and Anr. and also Misc Cri.Appln.No.2785 of 1993 decided by this Court on 8-1-1997, he has argued that since the aforesaid civil transaction has been tried to be converted into criminal one, it is an abuse of the process of law and hence, impugned complaint may be quashed.

5. It appears that the transaction in question is only civil transaction and it has been tried to be converted into criminal one by the complainant and hence, the complaint is nothing but pressure tactics applied by the complainant on the petitioners. If at all enhancement is permissible as per the terms of the contract, complainant has to file suit before the civil court at Delhi which shall have the jurisdiction under the terms and conditions of purchase order. Reliance is placed on a decision rendered by this Court reported in 1997(2) G.L.R. 1655 in the case of B.Ramesh & Ors. Vs. State of Gujarat more particularly part of head note `B' which reads as under:

> "On facts found that criminal action was being used as lever to knock out dues when case was exclusively of civil nature--complaint quashed."

In view of the above, the impugned complaint and the process deserve to be quashed and set aside and petition requires to be allowed.

6. This petition is allowed. Complaint and the process issued in Criminal Case No.149 of 1997 filed

against the petitioners by the respondent No.2-complainant pending in the Court of learned Metropolitan Magistrate, Court No.2, Ahmedabad are hereby quashed and set aside. Rule is made absolute.

(R.P.DHOLAKIA,J.)
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